

State Records Committee Meeting

Division of Archives,
Courtyard Meeting Room
October 10, 2013
Salt Lake City, Utah

SRC APPROVED
Date November 21
2013, SLM

Members Present: Marie Cornwall, Citizen Representative
David Fleming, Private Sector Records Manager
Lex Hemphill, Media Representative
Doug Misner, History Designee
Holly Richardson, Citizen Representative
Ernest Rowley, Elected Official Representative
Patricia Smith-Mansfield, Governor's Designee

Legal Counsel: Paul Tonks, Attorney General's Office
Chiarina Bautista, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Attending via telephone: Corey Vonberg, Petitioner
Michael Edwards, Iron County Sheriff's Office, Respondent

Others Attending: Matthew Bates, Summit County Attorney, Respondent
Rosemary Cundiff, Archives staff
Lorianne Ouder Kirk, Utah State Archives
Eric Peterson, *Salt Lake City Weekly*, petitioner
Colleen Schulte, Petitioner
Lana Taylor, Attorney General's Office, respondent
Rebekkah Shaw, Utah State Archives
Steve Sperry, Utah AG, Criminal Investigations Unit

Mr. Lex Hemphill, Chair of the committee, opened the meeting at 9:30 a.m. There were difficulties connecting by phone with the two parties scheduled for the first hearing. At 10:08 a.m. the parties were connected. Mr. Hemphill explained the procedures for the hearing.

Hearing: Corey Vonberg vs. Iron County Sheriff's Office

Opening -- petitioner

Mr. Vonberg said his request for an evidence release form had been resolved. He was appealing the denial of the Iron County Sheriff's policy for investigating an alleged child sex offense. He had received a policy statement from the Division of Child and Family Services (DCFS), but that was not what he had requested. He also wanted to know the identity of the person who had denied the original records request. He could not decipher the signature on the May 29, 2013, denial letter.

Mr. Hemphill read a statement submitted by the Iron County Sheriff's Office. Detective Jody Edward's statement said that in 2003 he was assigned to investigate a child sex offense in which Corey Vonberg was eventually charged, prosecuted, and convicted. He authored a report for the case in which he explained to Deputy Malcolm that the procedure for investigating a child sex

offense required a Children's Justice Center interview. He encouraged Deputy Malcolm to start his investigation in that direction. He said he was not referring to a written policy but rather the practice by which the department investigated that type of case. He said he was not aware of a written directive or policy which required an investigation in a specific manner.

Opening – respondent

Mr. Edwards said a copy of the statement had been sent to Mr. Vonberg. A letter sent to the State Records Committee by Iron County reviewed Mr. Vonberg's two requests. The policy regarding the disposition of evidence had been provided to Mr. Vonberg. There was agreement between the parties that the request had been honored. Mr. Vonberg requested the policy and procedure from the Iron County Sheriff's Office that the office is required to follow in investigating an alleged child sex offense requiring a Children's Justice Center interview pertaining to 2003. Iron County's position is that there is no such record. There is not a written policy from 2003 that requires a deputy to conduct an investigation in any specific manner.

Testimony – petitioner

Mr. Vonberg said the letter from Mr. Edward implied that there is a policy by which the office operates. The Department of Public Safety has policies and procedures by which they operate. He said he had not been informed of the identity of the person who denied his original request of May 29, 2013. He could not read the signature on the denial form.

Testimony – respondent

Mr. Edwards said the May 29, 2013, denial probably was signed by Melissa Montillano. It clearly came from the Iron County Sheriff's Office. The affidavit from Jody Edwards was clear that there was no written policy or procedure regarding the investigation of a child sex offense. There is no record to produce in response to the request. Pursuant to Utah Code, 63G-2-201(8)(a)(i), a governmental entity is not required to create a record in response to a request. No record was created in response to Mr. Vonberg's request. The Iron County Sheriff's Office has a policy on elder abuse but no policy or record was created to address Mr. Vonberg's concerns. Although there are written policies, Mr. Edwards said there was not one specific to Mr. Vonberg's request.

Closing – petitioner

Mr. Vonberg said he would like to know the policy whether it was in writing or not. He said it should be a written policy.

Closing – respondent

Mr. Edwards said he had nothing more to add.

Deliberation

Ms. Smith-Mansfield made a motion that the petitioner's request be denied in that there is no record responsive to his request that is maintained by the Iron County Sheriff's Department. Ms. Richardson seconded the motion. A vote was taken. The vote was unanimous in favor of the motion. Mr. Hemphill said an order would be sent to the parties within seven business days.

Hearing: Eric Peterson, *City Weekly* vs. Attorney General's Office, second continuance

Mr. Misner and Ms. Cornwall, since they had not participated in the previous hearings with Mr. Peterson, did not participate in the current hearing. Mr. Hemphill said that the committee had voted in the August meeting to inspect the email correspondence and the investigation files in the Whitewater VII case investigated by the Utah Attorney General's Office. The emails were inspected by the committee. The committee had ordered the release of 6 emails to Mr. Peterson. The 33 emails, the Attorney General's Office characterized as relating to an ongoing investigation, were not acted on. The news that the investigative files had been turned over for a federal investigation was not official until recently. Mr. Hemphill said he was interested in opening the discussion about the 33 emails since it had been confirmed that there was no ongoing investigation against Mr. Swallow. The emails could be viewed differently with that information.

Testimony – respondent

Since the last hearing, Ms. Taylor said she had learned that all of the requested records were relevant to an ongoing investigation by the FBI. Ms. Taylor said she had not filed a brief about the applicability of Federal Rule 6 but she had received information that there was a secrecy order pertaining to all of the records included in the request by Mr. Peterson, both emails and investigative records. She said the shutdown of the federal government had forestalled her efforts to get information. Ms. Taylor said the records are relevant to an ongoing investigation and are protected pursuant to Utah Code 63G-2-305(10)(a).

Testimony – petitioner

Mr. Peterson said he had prepared an argument about Federal Rule 6 and the validity of its applicability to protection of the emails and the investigation. The shutdown of the federal government was not relevant. The deadline for submitting the brief to the committee was September 27, 2013, four or five days before the federal shutdown on October 1, 2013. There had been time to contact the federal agency and to find out if the rule applied to the emails and the investigation. There had been ample time for the federal investigators to understand the records were being requested and to register a concern about the release of the records. It was apparent that the Utah Attorney General's Office did not have an assisting role in the federal investigation and was not able to prove that the records were part of an ongoing federal investigation.

Testimony – respondent

Ms. Taylor said she had been making inquiries since August as to whether there is a secrecy order in place. She was not in a position to argue Rule 6 but said the records were still protected by Utah Code 63G-2-305 (10)(a) and their release would interfere with an ongoing investigation. Special Agent Sperry was sworn as a witness. He said that the concerns of law enforcement while an investigation is pending were that witnesses and victims in a case would not be willing to come forward. The security of the witnesses was also a concern. Witnesses could become intimidated enough to prevent testimony. If assets or evidence were not preserved, it could be difficult to get restitution for victims. If records were destroyed prematurely, the gathering of facts would be difficult and evidence would be harder to maintain. Mr. Sperry said he had been in charge of the Whitewater VII investigation for two years. He was consulting with the FBI on

the case. Mr. Sperry said the FBI had been provided with 4 boxes of records and many files of digital data. He said he is involved in explaining the documents, is acquainted with the federal system, and will act as a witness as he assists the FBI.

Closing –petitioner

Mr. Peterson said there was public benefit in knowing how the government had used resources to promote private business. The public benefit outweighed the protection of the records. There was an increased public concern about the investigation. *City Weekly* did not want to publish witnesses' names or to hurt anyone. It is telling that the FBI had not objected to or prevented the requests for records. The objection would have come before the shutdown of the federal government. The public needs to know how government resources have been used to promote private interests. FBI involvement in the investigation has increased the public's interest in the matter and the preponderance of evidence suggested that the public would be served by release of the records. Rule 6 would apply if the Attorney General's Office was participating along with the federal government in an investigation, but that does not appear to be the case.

Closing – respondent

Ms. Taylor said it was not clear to whom the records currently belonged. Records could be shared between investigative agencies with the understanding that the records would not be released while an investigation was ongoing. She said federal district court secrecy orders would be binding on the Utah Attorney General's Office. Her office had been trying to contact the federal government since before the August hearing. The emails and the investigative records were all protected under Utah Code 63G-2-305(10)(a). The records were relevant to an ongoing investigation and release of the records would interfere with the investigation.

Deliberation

Mr. Hemphill made a motion to go in camera to review the emails. There was no second and the motion was withdrawn. Ms. Smith-Mansfield said that since the investigative report records had not been made available to review, and the governmental entity argued that the records may be protected by a federal Rule 6 and a federal secrecy order, the matter should go to District Court. Mr. Hemphill said he believed some of the 33 emails did not pertain to the Whitewater VII investigation and could be released. Mr. Rowley said the state had been informed in writing of a secrecy order and the extent of that order had not yet been established. Mr. Fleming said there was still an order in place for the committee to review the investigative reports in camera. He wondered how the records being part of a federal investigation changed that. Mr. Hemphill said he had originally voted against opening the investigative files for the committee's review. After discussion, the motion to go in camera to review the emails was reinstated. Ms. Smith-Mansfield seconded the motion. A vote was taken. Mr. Fleming voted against the motion. Mr. Hemphill, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed four to one. The committee went into closed session.

11:40 a.m. – 12:17 closed session

A motion was made by Ms. Smith-Mansfield to return to open session. Mr. Fleming seconded the motion. The vote was unanimous to return to open session.

Deliberation – continued

Mr. Hemphill made a motion that the 6 emails known as the Jeff Jones Group be released along with the 24 emails in the Gang Bills group with the exception of # 20. The emails were responsive to Mr. Peterson's request and were not protected by Utah Code 63G-2-305(10)(a). Mr. Hemphill said whether or not the emails were subject to a federal rule at this point was uncertain. The governmental entity argued that all the emails fell under the protection of Utah Code 63G-2-305(10)(a). Ms. Smith-Mansfield seconded the motion. A vote was taken on the motion to release the 6 emails as well as 23 of the emails in the Gang Bills Group. Mr. Rowley and Mr. Fleming opposed the motion. Mr. Hemphill, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed three to two. Mr. Hemphill made a motion that the three emails in the UTA Group and the six emails in the Bruce Jones Group were properly classified as protected pursuant to Utah Code 63G-2-305(10)(a) and should not be released. Ms. Smith-Mansfield seconded the motion. A vote was unanimous in favor of the motion. Mr. Hemphill said that the investigative records had become a federal investigation and the petitioner had not established by a preponderance of evidence that the weighing provision should apply. Ms. Smith-Mansfield made a motion that the investigative files were properly classified as protected pursuant to Utah Code 63G-2-305(10) and should not be reviewed by the committee in camera. The motion was seconded by Mr. Rowley. A vote was taken. Ms. Smith-Mansfield and Ms. Richardson voted against the motion. Mr. Hemphill, Mr. Fleming, and Mr. Rowley voted in favor of the motion. The motion passed three to two. Mr. Hemphill said that an order would be sent within seven days to the parties. He thanked them for attending the hearing.

Lunch Break: 12:53p.m. – 1:03p.m.

Hearing – Colleen Schulte vs. Summit County

Mr. Hemphill asked the parties to introduce themselves. Mathew Bates, Summit County Attorneys' Office, represented the respondent. Colleen Schulte was the petitioner.

Opening – petitioner

Ms. Schulte said she requested emails between the prosecutor and Mr. Schulte. She said she had a right to the emails to defend herself against false information. She said Mr. Schulte had been influenced by the Summit County Attorney to file criminal charges against her. She had the right to defend herself and to examine public records which she thought contained false information. The false information may have influenced Mr. Schulte to file criminal charges against her.

Opening – respondent

Mr. Bates said release of the prosecutor's records would interfere with enforcement proceedings against Ms. Schulte. Following or in anticipation of rules of criminal procedure, Ms. Schulte would be entitled to any pertinent records under the rules of discovery. Summit County released most of the records responsive to the request, but would not provide her with records to which she is not entitled.

Testimony and closing – petitioner

Colleen Schulte said the emails dated March 8 and February 13 were missing from the records released. She wanted the missing emails and to have copies of all the emails unredacted. She said

the information was relevant to her defense. She stated she was the victim not Mr. Schulte and needed the records to defend herself against his accusations.

Testimony and closing -- respondent

Mr. Bates said several emails inadvertently were released to Ms. Schulte. She had received all the records reasonably necessary to prepare her defense. Her further remedy was before the court. A GRAMA request was not applicable to the records she sought because if they were released to her they would be public records. Mr. Schulte has been sharing information with Mr. Tom Bates. Ms. Schulte is entitled to anything that could be used against her as evidence. Summit County is a small community and members of a jury often know each other. Release of any of the requested records was better left to the court and to the discovery process.

Deliberation:

Ms. Smith Mansfield made a motion to go in camera to inspect the records. Mr. Fleming seconded the motion. A vote was taken. The vote was unanimous in favor of going in camera to inspect the records.

Closed session: 12:53p.m. – 1:05p.m.

Deliberations continued:

Mr. Fleming made a motion to return to open session. Ms. Smith-Mansfield seconded the motion. A vote was taken. The vote was unanimous in favor of returning to open session. Mr. Hemphill made a motion that the records were properly classified as protected pursuant to Utah Code 63G-2-305(18). Ms. Smith-Mansfield seconded the motion. A vote was taken. The vote was unanimous in favor of the motion. Mr. Hemphill said an order would be sent to the parties within seven days. He thanked them for their appearance at the hearing.

Approval of September 12, 2013 SRC Minutes

Mr. Rowley made a motion to approve the minutes with corrections. Mr. Misner did not participate in the meeting, and a correction to a vote count was made with that information. Mr. Fleming seconded the motion. The vote in favor of the motion was unanimous. Ms. Cornwall abstained from voting as she had not attended the meeting.

Approval of Retention Schedules

Rebekkah Shaw, Archives records analyst, presented two retention schedules for approval. See the attached documentation.

Publications, 30380, State General Schedule 1-25, retention is permanent.

A motion to approve the retention was made by Mr. Fleming and seconded by Ms. Smith-Mansfield. The vote was unanimous in favor of approval.

Workers Compensation Files 6861, Municipal General Schedule 8-16, 30120, retention of 75 years from the date of the incident. Ms. Smith-Mansfield made a motion to approve the retention. Mr. Fleming seconded the motion. The vote was unanimous in favor of approval.

Appeals to the Records Committee

See attached report as distributed to the committee.

Appeals in District Court

Mr. Tonks presented the appeals currently in district court. See the attached report.

Other Business

The Committee will have training in the Open and Public Meetings Act scheduled for November and December. The training will be given by Paul Tonks.

Adjournment

Ms. Smith-Mansfield made a motion to adjourn. Mr. Fleming seconded the motion. The meeting was adjourned by acclamation.

STATE RECORDS COMMITTEE
October 10, 2013

State Archives Building, Courtyard Meeting Room
346 S. Rio Grande (450 West)
Salt Lake City

AGENDA
Call to Order 9:30 a.m.

Corey Vonberg vs. Iron County Sheriff's Office. Mr. Vonberg is appealing the denial of records from the Iron County Sheriff's Office.

Continuance: Eric Peterson, *Salt Lake City Weekly* vs. Utah Attorney General's Office. Mr. Peterson is appealing the denial of records of an investigation into the Whitewater VII Development and records of communications with the Attorney General's Office.

Colleen Schulte vs. Summit County Sheriff's Department. Ms. Schulte is appealing the denial of copies of communications between Dean Schulte and the county attorney's office.

BUSINESS

Introduction of new State Records Committee member: Marie Cornwall

Approval of September 12, 2013, SRC Minutes, action item

Approval of retention schedules, action item

Open and Public Meeting training scheduled for SRC members, action item

SRC appeals received

Cases in District Court

Other Business

November meeting schedule, action item

Adjournment

**SRC Appeals Received
October 2013**

1. **13-26 Eric Peterson, Salt Lake City Weekly vs. Utah Attorney General's Office.** Mr. Peterson is appealing the denial of records of an investigation into the Whitewater Development and records of communication. Continuance of hearing scheduled for October.
2. **13-25 Colleen Schulte vs. Summit County.** Ms. Schulte is appealing a partial denial of records from the Summit County Attorney's Office involving the County Attorney's office and a specific person. Hearing postponed. Scheduled for October.
3. **13-27 Corey Vonberg vs. Iron County Sheriff.** Mr. Vonberg is appealing the partial denial of procedures for investigating an alleged child sex offense and a disposition of evidence form. Hearing scheduled for October.
4. **13-32 Salt Lake School District vs. Utah State Auditor's Office.** The District is appealing the denial of copies of complaints against the District received by the Auditor's Office. Hearing to schedule for November.
5. **13-33 Morgan Fife vs. City of Orem.** Mr. Fife is appealing the denial of documents related to a Request for Proposal prepared by Orem City. Hearing to Schedule for November
6. **13-34 Damon Crist vs. Department of Motor Vehicles.** Mr. Crist requested a copy of his driver's license. He did not get a response. He was given a correct address to renew his request. Incomplete.
7. **13-35 Mark Shenefelt, Ogden Standard Examiner vs. Willard City.** Mr. Shenefelt appealed the denial of a Willard City police report and associated documents. Hearing to schedule for November.
8. **13-36 Jimmy Guard vs. Utah Department of Corrections.** Mr. Guard requested a copy of his phone list. Incomplete.
9. **13-37 Stacey Millett vs. Washington City.** Mr. Millet appealed the denial of a police report and supplemental information. Hearing to schedule for November
10. **13-38 Roger Brynner vs. Cottonwood Heights.** Mr. Brynner is appealing the denial of records and a fee waiver denial. Hearing to schedule for November

October 2013 Records Committee Case Updates

District Court Cases

Williams v. Mumford, 3rd Judicial District, Salt Lake County, Case No. 130901187, Judge Faust, filed February 14, 2013.

Current Disposition: On July 26, 2013, AG office filed a Motion to Dismiss case. Court is granting motion, has asked for a prepared entry of dismissal which has been filed with the Court.

Utah Transit Authority v. Janelle Stecklein, 3rd District, Salt Lake County, Judge Parker, Case No. 120908696, filed December 21, 2012.

Current Disposition: Case in discovery stage with exchange of interrogatories and requests for admissions.

Lawrence v. Dept. of Public Safety, 3rd District, Salt Lake County, Case No. 120907748, Judge Dever, filed November 19, 2012.

Current Disposition: Lawrence has filed a request for payment of attorney fees against Public Safety.

Utah Dept. of Human Services v. Wilson, 3rd District, Salt Lake County, Case No. 120903186, Judge Kelly, filed May 10, 2012.

Current Disposition: Mr. Wilson's Civ.R. 59 Motion for Relief from Judgment was denied by the Court after a hearing held on October 2, 2013. Final order has been prepared and submitted by Human Services which still needs to be signed by the Judge.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, filed June 18, 2010.

Current Disposition: Law and motion hearing set for November 13, 2013 regarding motion to dismiss second counterclaim filed by Jordan River.

Appellate Court Cases

Attorney General Office. v. Schroeder, Court of Appeals Case No. 20121057.

Current Disposition: Appellant brief filed on October 4, 2013. Issues raised involve trial court's decision in favor of the AG's office and reversing the Committee including whether release of the bank records could be forbidden based upon privacy interests.

Salt Lake City Corp. v. Mark Haik, Court of Appeals Case No. 20130383.

Current Disposition: Appellant brief filed on September 25, 2013. No issues involved regarding the Committee (appeal went directly to District Court).

SCHEDULE 1
ADMINISTRATIVE RECORDS

PUBLICATIONS

(Item 1-25)

Any record, regardless of format, that is issued by a governmental entity for public distribution at the total or partial expense of that governmental entity. See Utah Code Section 9-7-101 8(a)(b) (2010) and 9-7-208 (2006)

RETENTION

Permanent. Creating agency shall transfer preservation copy(les) to State Archives and access copy(les) to the State Library.

SUGGESTED PRIMARY DESIGNATION

Public.

Utah State Archives

Parent Agency:

Error - Agency Does Not Exist

Error - Agency Does Not Exist

Agency:**Records Officer**

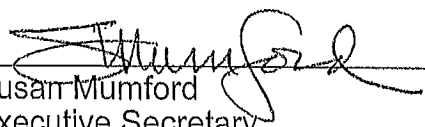
30380 PUBLICATIONS

30120 WORKERS' COMPENSATION CLAIM FILES

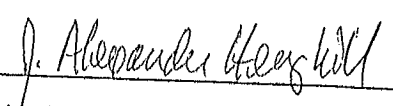
Destroying records in accordance with this agency Retention Schedule is in compliance with the Archives and Records Service and Government Records Access and Management Act (UCA 63-2-101 et seq.).

The Agency classifies its records under provisions of the Government Records Access and Management Act (UCA 63-2-101 et seq.). Classifications have not been approved by the State Records Committee.

This agency retention schedule was approved by the State Records Committee in October 2013.



Susan Mumford
Executive Secretary
State Records Committee



Chair
State Records Committee

Utah State Archives

AGENCY: ??????????????????

SERIES: 30380

TITLE: PUBLICATIONS

DATES:

ARRANGEMENT:

DESCRIPTION:

Any record, regardless of format, that is issued by a governmental entity for public distribution at the total or partial expense of that governmental entity. See Utah Code Section 9-7-101 8(a)(b) (2010) and 9-7-208 (2006)

RETENTION:

Permanent.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

APPRAISAL:

This disposition is based on Utah State General Records Retention Schedule, Schedule 1, Item 25.

PRIMARY CLASSIFICATION:

Public

Utah State Archives

AGENCY: ????????????????????

SERIES: 30120

TITLE: WORKERS' COMPENSATION CLAIM FILES

DATES:

ARRANGEMENT:

DESCRIPTION:

All records about on-the-job injuries or job related disabilities, regardless of whether claims for compensation were made. See UCA 34A-2 for Workers Compensation Act

RETENTION:

Retain for 75 years from date of incident and then destroy.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

PRIMARY CLASSIFICATION:

Private

SECONDARY CLASSIFICATION(S):

Public.

Utah Code 63G-2-301 (1)(b) (2012)

Utah State Archives

Parent Agency: Salt Lake City
Mayor

Agency: Salt Lake City (Utah). Mayor. Division of Risk Management

324 South State Street
Salt Lake City, UT 84111
535-6295

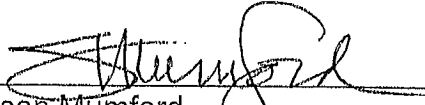
Records Officer

06861 Workers' compensation files

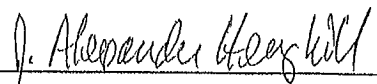
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Susan Mumford
Executive Secretary
State Records Committee



Chair
State Records Committee

Utah State Archives

AGENCY: Salt Lake City (Utah). Mayor. Division of Risk Management

SERIES: 6861

TITLE: Workers' compensation files

DATES: 1960-

ARRANGEMENT: Numerical by assigned number, department number, or category

ANNUAL ACCUMULATION: 3.10 cubic feet.

DESCRIPTION:

These employee files document job related injuries and are used to document employees claims. These files include vouchers for medical bills, check stubs for payroll, medical reports, authorization forms and compensation agreements.

RETENTION:

Retain 75 years

DISPOSITION:

Destroy.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

Paper: Retain in Office for 5 years and then transfer to State Records Center. Retain in State Records Center for 70 years and then destroy.

Computer data files: For records beginning in 2011 and continuing to the present. Retain in Office for 75 years and then delete.

APPRAISAL:

Administrative

Utah Code 34A-2-417 & Utah Code 34A-2-420

PRIMARY CLASSIFICATION:

Private Utah Code Section 63G-2-302(1)(b)(2013)

Utah State Archives

AGENCY: Salt Lake City (Utah). Mayor. Division of Risk Management

SERIES: 6861

TITLE: Workers' compensation files

(continued)

SECONDARY CLASSIFICATION(S):

Public